IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Appeal from Order No.116 of 2006.

Smt. Kempawwa wd/o. Rajhans
Vhatkar & Anr. ..Appellants

versus

Shri Suresh Rajaram Pol
& Others ..Respondents

Mr.S.S.Redekar for the Appellants

Mr. Bhushan Walimbe for the Respondent No.1

Coram : S.R.Sathe, J.
Dated : 21st August, 2007

P.C.

1. Heard both the learned advocates.

2. Being aggrieved by the Order passed under Order VII Rule 10 of CPC whereby plaint was returned to the plaintiff for presentation to the proper court, the plaintiff has filed the present appeal.

3. It is not in dispute that the plaintiff filed suit for declaration and possession of the suit land wehrein the grievance of the plaintiff was that the defendant obtained the Certificte under Section 32G of BTAL Act by playing froud on the Court and on that basis, got the sale deed of the suit land executed in his favour. Whether the

certificate granted by the Revenue Authorities in favour of defendant under Section 32G is correct or not, or is obtained by fraud can be decided by the Revenue Court. Moreover, it is admitted that being aggrieved by the issuance of such certificate in favour of defendant, plaintiff has already filed an appeal before the Appellate Forum wherein the grant of Certificate under Section 32G is under challenge. The said appeal is pending. So, having regard to the provisions of Section 85 and 85(a) of the BTAL Act the learned Trial Judge has rightly held that Civil Court has no jurisdiction to try the said suit and hence he answered the preliminary issue with regard to jurisdiction in favour of defendant and directed that the plaint be returned to plaintiff.

3. The learned advocate for the appellant could not point out as to how the above mentioned suit is maintainable. From the averments in the plaint it does appear that the plaintiff has in fact challenged the grant of Certificate issued under Section 32G in respect of which appeal is pending. The Order passed by the learned trial judge is legal and correct. Hence, appeal is dismissed.

(S.R.Sathe, J.)